

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Mayaguez Radio Corporation,)	File Number EB-02-SJ-030
)	
Antenna Structure Registration No. 1013203)	NAL/Acct. No.200232680005
)	
San Juan, PR)	FRN 0001-8326-33

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: May 29, 2002

By the Enforcement Bureau, San Juan Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture, we find Mayaguez Radio Corporation (“Mayaguez”), owner of antenna structure no.1013203 at Mayaguez, Puerto Rico, willfully violated Section 17.51 of the Commission's Rules (“Rules”)¹ by failing to exhibit the prescribed obstruction lighting. We find Mayaguez Radio Corporation apparently liable for forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. On April 25, 2002, an agent from the FCC Enforcement Bureau’s San Juan Resident Agent Office inspected the antenna structure no. 1013203 after local sunset at 7:40 P.M. The agent observed all lights on the structure unlit.

3. On April 26, 2002, the agent conducted an inspection of AM broadcast station WTIL.² When questioned about the lighting on Mayaguez’ antenna structure, the station manager stated that the lighting alarm system was inoperative and that he did not know if the lights had been on the previous night. The manager stated that the lighting could be visually observed from the studio window, but he did not know when or if an observation had been made on April 25, 2002. The station’s log had no entries concerning light outages. After the inspection, the agent contacted the area Federal Aviation Administration (“FAA”) Flight Service Station and determined they had no report of a light outage for this antenna structure.

III. DISCUSSION

¹ 47 C.F.R § 17.51.

² Mayaguez is the licensee of radio station WTIL(AM) in addition to being owner of the antenna structure.

4. Section 17.51 of the Rules requires prescribed obstruction lighting be exhibited. Mayaguez' antenna structure was observed on April 25, 2002 after sunset at 7:40 PM with obstruction lights not functioning. Section 17.47(a) of the Rules requires that antenna structure owners make an observation of the antenna structure's lights at least once each 24 hours or, alternatively, use an automatic alarm system to detect lighting failures.³ During an inspection of WTIL on April 26, 2002, the station manager had no mechanism to determine if tower lights were properly working the previous night, had no knowledge as to whether the lights had been visually observed, and the station's log had no entries indicating lighting failures.

5. Based on the evidence before us, we find Mayaguez Radio Corporation willfully⁴ violated Section 17.51 by failing to exhibit prescribed obstruction lighting.

6. Pursuant to Section 1.80(b)(4) of the of the Rules,⁵ the base forfeiture for failure to comply with prescribed lighting is \$10,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁶ Considering the entire record and applying the factors listed above, this case warrants a \$10,000 forfeiture.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁷ and Sections 0.111, 0.311 and 1.80 of the Commission's Rules,⁸ Mayaguez Radio Corporation is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willful violation of Section 17.51 of the Rules by failing to exhibit the prescribed obstruction lighting on its antenna structure.

8. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Mayaguez Radio Corporation SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

³ 47 C.F.R. § 17.47.

⁴ "Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁵ 47 C.F.R. § 1.80(b)(4).

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. §§ 0.111, 0.311, 1.80.

9. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above.

10. The response if any must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. and FRN referenced above.

11. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

12. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operation Group, 445 12th Street, S.W., Washington, D.C. 20554.⁹

13. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to Mayaguez Radio Corporation, P.O. Box 489, Mayaguez, PR 00681-0489.

FEDERAL COMMUNICATIONS COMMISSION

William Berry
Resident Agent - San Juan Office, Enforcement Bureau

⁹ See 47 C.F.R. § 1.1914.